

**INTERPRETIVE LETTER 95-14 (DECEMBER 19, 1995)**

**Incorporators of an Illinois state bank in organization may, to satisfy the requirement of Section 8, subscribe to stock of the bank or stock of the corporation formed to be the bank holding company of the bank.**

This letter is in response to your inquiry on behalf of \* ("Bank"), an Illinois state bank in organization, and \* Inc., an Illinois corporation organized for the purpose of becoming the Bank's holding company ("Holding Company"), in which you asked whether the incorporators may satisfy the requirement of Section 8 of the Illinois Banking Act ("Act"), 205 ILCS 5/8 (1994), that they subscribe for "stock" by purchasing Holding Company stock. For the reasons set forth in this letter, we conclude that incorporators may purchase Holding Company stock to fulfill this requirement.

Section 8 of the Act provides:

Sec. 8. Incorporators. A State bank may be organized on application by 5 or more incorporators who shall be individuals and residents of this State except that a bank holding company may be the sole incorporator of a State bank. Each incorporator shall undertake to subscribe and pay in full in cash for **stock** having a value of not less than one per cent of the minimum capital, surplus and reserve for operating expense requirements as set forth in Section 7. (emphasis added).

From the language of Section 8, it is clear that an incorporator may be either an individual or a bank holding company, but Section 8 is ambiguous concerning the corporate entity in which the incorporator must purchase **stock**. In the present instance, the Holding Company is a business corporation that, when the process is completed, will have obtained control of the Bank and at the same time obtained approval from the Board of Governors of the Federal Reserve System ("FED") to be a bank holding company.

When the General Assembly wishes to explicitly refer to stock held in a particular corporate entity, it has demonstrated that it can do so. See the Act at Section 2 (in definition of "mid-tier holding company," reference to "stock of a state bank"), Section 5(10) (stock of a corporation, subsidiary), Section 5(12) (reference to stock in a subsidiary corporation), Section 5(22) (referring to ownership of stock of a corporation operating a travel agency), Section 5C (referring to ownership of "stock of a bank or holding company"), Section 13 (referring to "stock of the bank" and a commission in connection with its sale) and Section 14 (referring to "stock of a state bank").

The highlighted portion of Section 8 above refers to required ownership interest of incorporators. If the bank is initially organized with the expectation that a holding company will own 100% of the stock of the bank, it elevates form over substance to require the additional step that individual incorporators purchase their required shares in

bank stock and then transfer them to the bank holding company or exchange the shares for holding company stock immediately after organizing the bank. The Agency views this provision as similar to the former provision in Section 16 of the Act that required directors to hold qualifying shares, a requirement which could be satisfied by acquiring shares in the bank or the bank holding company that controlled the bank. The Agency therefore would offer no objection if, pursuant to Section 8, incorporators purchase their required ownership interest in Holding Company stock. However, if the Holding Company is not finally approved to own the Bank, or if the Holding Company is not approved by the FED to be a bank holding company, then at that time incorporators' investment in the corporation that had been the intended Holding Company would no longer satisfy the Section 8 stock ownership requirement.